



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID**

AMENDMENT NO. 002
IFB NO. B1E04356
TITLE: Laboratory Equip: Formaldehyde Analyzer
ISSUE DATE: 5/17/04

REQ #: NR 780 34104000028
BUYER: Cindy Stafford
PHONE NO.: (573) 751-7076
E-MAIL: cindy.stafford@oa.mo.gov

RETURN BID NO LATER THAN: 05/26/04 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID AND AMENDMENT(S) TO:

**DPMM
P O BOX 809
JEFFERSON CITY MO 65102-0809**

or

**DPMM
301 WEST HIGH ST, RM 630
JEFFERSON CITY MO 65101**

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

**Department of Natural Resources
Environmental Services Program
2710 West Main Street
Jefferson City, MO 65109**

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all terms and conditions, requirements, and specifications of the original IFB as modified by this and any previously issued IFB amendments. The bidder should, as a matter of clarity and assurance, also sign and return all previously issued IFB amendment(s) and the original IFB document. The bidder agrees that the language of the original IFB as modified by this and any previously issued IFB amendments shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB amendment is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE
PRINTED NAME		TITLE
COMPANY NAME		
MAILING ADDRESS		
CITY, STATE, ZIP		
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.
PHONE NO.	FAX NO.	E-MAIL ADDRESS

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

AMENDMENT #002 TO IFB B1E04356

TITLE: LABORATORY EQUIP: FORMALDEHYDE ANALYZER

Prospective bidders are hereby notified of the following changes and clarifications:

1. Closing Date:
As Stated: Return bid no later than: 05/25/04 at 2:00 p.m.
Change To: Return bid no later than: 05/26/04 at 2:00 p.m.
2. Paragraph 2.12 has been **DELETED**.
3. Paragraph 2.12.1 has been **DELETED**.
4. Paragraph 3.1.6 has been **REVISED**.
5. Paragraph 3.1.9 has been **REVISED**.
6. Paragraph 3.1.11 has been **REVISED**.
7. Warranty language on the Pricing Pages has been **REVISED**.
8. Delivery language on the Pricing Pages has been **REVISED**.



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID**

AMENDMENT NO. 001

IFB NO. B1E04356

TITLE: Laboratory Equip: Formaldehyde Analyzer

ISSUE DATE: 05/14/04

RETURN BID DATE REVISED BY AMENDMENT #002:

RETURN BID NO LATER THAN: 05/26/04 AT 2:00 PM

REQ #: NR 780 34104000028

BUYER: Cindy Stafford

PHONE NO.: (573) 751-7076

E-MAIL: cindy.stafford@oa.mo.gov

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID AND AMENDMENT(S) TO:

**DPMM
P O BOX 809
JEFFERSON CITY MO 65102-0809**

or

**DPMM
301 WEST HIGH ST, RM 630
JEFFERSON CITY MO 65101**

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

**Department of Natural Resources
Environmental Services Program
2710 West Main Street
Jefferson City, MO 65109**

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all terms and conditions, requirements, and specifications of the original IFB as modified by this and any previously issued IFB amendments. The bidder should, as a matter of clarity and assurance, also sign and return all previously issued IFB amendment(s) and the original IFB document. The bidder agrees that the language of the original IFB as modified by this and any previously issued IFB amendments shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB amendment is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE
PRINTED NAME		TITLE
COMPANY NAME		
MAILING ADDRESS		
CITY, STATE, ZIP		
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.
PHONE NO.	FAX NO.	E-MAIL ADDRESS

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

AMENDMENT #001 TO IFB B1E04356

TITLE: LABORATORY EQUIP: FORMALDEHYDE ANALYZER

Prospective bidders are hereby notified of the following changes and clarifications:

1. Closing Date:
As Stated: Return bid no later than: 05/17/04 at 2:00 p.m.
Change To: Return bid no later than: 05/25/04 at 2:00 p.m.
2. The Terms and Conditions have been **REVISED**.
3. Bidders are hereby notified that Amendment #002 may be forthcoming with additional information.



**STATE OF MISSOURI
OFFICE OF ADMINISTRATION
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)
INVITATION FOR BID**

IFB NO.: B1E04356

TITLE: Laboratory Equip: Formaldehyde Analyzer

ISSUE DATE: 05/03/04

REQ. NO.: NR 780 34104000028

BUYER: Cindy Stafford

PHONE NO.: (573) 751-7076

E-MAIL: cindy.stafford@oa.mo.gov

RETURN BID DATE REVISED BY AMENDMENT #002:

RETURN BID NO LATER THAN: 05/26/04 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID TO: DPMM or DPMM
P O BOX 809 301 WEST HIGH ST, RM 630
JEFFERSON CITY MO 65102-0809 JEFFERSON CITY MO 65101

CONTRACT PERIOD: DATE OF AWARD THROUGH ONE YEAR

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

**Department of Natural Resources
Environmental Services Program
2710 West Main Street
Jefferson City, MO 65109**

PARAGRAPH REVISED BY AMENDMENT #001:

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 05/03/04). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE
PRINTED NAME		TITLE
COMPANY NAME		
MAILING ADDRESS		
CITY, STATE, ZIP		
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.
PHONE NO.	FAX NO.	E-MAIL ADDRESS

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

1. INTRODUCTION

1.1 Purpose:

- 1.1.1 This document constitutes an invitation for sealed bids from prospective bidders for the purchase of a formaldehyde analyzer by the State of Missouri, Department of Natural Resources (hereinafter referred to as “state agency”) in accordance with the requirements and provisions stated herein.

1.2 Contact:

- 1.2.1 Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc. related to the bid document must be referred to the Buyer of Record identified on the first page of this document. Such communication should be received at least ten calendar days prior to the official bid opening date.

2. CONTRACTUAL REQUIREMENTS

2.1 Contract:

- 2.1.1 A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor’s response (bid) to the IFB, (3) clarification of the bid, if any, and (4) the Division of Purchasing and Materials Management’s acceptance of the bid by “notice of award” or by “purchase order”. All Exhibits and Attachments included in the IFB shall be incorporated into the contract by reference.
- a. The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
 - b. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
 - c. Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

2.2 Contract Period:

- 2.2.1 The original contract period shall be as stated in the Invitation for Bid (IFB). The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.

2.3 Hazardous Materials Data Sheet and Labeling:

- 2.3.1 The State of Missouri, Division of Purchasing and Materials Management, in accordance with the revised rules and regulations of the Occupational Safety and Health Administration (OSHA) requires that all hazardous chemicals and other appropriate commodities purchased by the State of Missouri must contain a material safety data sheet and warning labels with each shipment. Therefore, the contractor must comply with this mandatory requirement for all commodities which contain hazardous material. Failure to comply with this requirement may cause cancellation of the contract with goods returned at the contractor's expense as well as suspension from the solicitation list for future requirements.

2.4 Estimated Quantities:

- 2.4.1 The quantities indicated in this Invitation for Bid are estimates that pertain to the total aggregate quantities that may be ordered throughout the stated contract period. The estimates do not indicate single order amounts unless otherwise stated. The State of Missouri makes no guarantees about single order quantities or total aggregate order quantities.

2.5 Price:

- 2.5.1 All prices shall be as indicated on the Pricing Page. The state shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

2.6 Freight, Shipping and Handling Charges:

- 2.6.1 All prices shall include all packing, handling, shipping and freight charges ***FOB Destination, Freight Prepaid and Allowed***. The State of Missouri shall not make additional payments or pay add-on charges for freight or shipping unless specifically described and priced in the bid, or as otherwise specifically stated and allowed by the IFB.

2.7 Ordering:

- 2.7.1 The agency will issue its own properly authorized purchase order on an as needed basis. The contractor must not ship until he/she is in receipt of an approved contract release.

2.8 Substitutions:

- 2.8.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management.

2.9 Delivery Performance:

- 2.9.1 The contractor and/or the contractor's subcontractor(s) shall deliver products in accordance with the contracted delivery times stated herein to the state agency upon receipt of an authorized order. Delivery shall include unloading shipments at the state agency's dock or other designated unloading site as requested by the state agency. All orders must be shipped F.O.B. Destination, Freight Prepaid and Allowed. All orders received on the last day of the contract, must be shipped at the contract price. All deliveries must be coordinated with the state agency.

2.10 Replacement of Damaged Product:

- 2.10.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

2.11 Payment Terms:

- 2.11.1 All payment terms shall be as stated in the Terms and Conditions of the contract (see paragraph 10, "Invoicing and Payment") unless otherwise addressed in the IFB, or mutually agreed to by the state and the contractor. Payment terms should be net 30 days unless otherwise stated in the IFB. No late charges shall be applied which are not in compliance with Chapter 34.055 RSMo. This statute may be found at <http://www.moga.state.mo.us/STATUTES/STATUTES.HTM>.

- 2.11.2 The contractor shall understand and agree the state reserves the right to make contract payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor must return a completed state Vendor ACH/EFT Application which is downloadable from the following website: <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>. Each contractor invoice must contain a unique invoice number. The invoice number will be listed on the state's EFT addendum record to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the IFB.

PARAGRAPH DELETED BY AMD. #002:

2.12 DELETED

PARAGRAPH DELETED BY AMD. #002:

2.12.1 DELETED.

2.13 Insurance:

- 2.13.1 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

2.14 Contractor Liability:

- 2.14.1 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- a. The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
 - b. Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.

2.15 Subcontractors:

- 2.15.1 Any subcontracts for the products/services described herein must include appropriate provisions and contractual obligations to ensure the successful fulfillment of all contractual obligations agreed to by the contractor and the State of Missouri and to ensure that the State of Missouri is indemnified, saved, and held harmless from and against any and all claims of damage, loss, and cost (including attorney fees) of any kind related to a subcontract in those matters described in the contract between the State of Missouri and the contractor. The contractor shall expressly understand and agree that he/she shall assume and be solely responsible for all legal and financial responsibilities related to the execution of a subcontract. The contractor shall agree and understand that utilization of a subcontractor to provide any of the products/services in the contract shall in no way relieve the contractor of the responsibility for providing the products/services as described and set forth herein. The contractor must provide notice and obtain acknowledgement from the State of Missouri prior to changing subcontractors.

2.16 Termination:

- 2.16.1 The Division of Purchasing and Materials Management reserves the right to terminate the contract at any time, for the convenience of the State of Missouri, without penalty or recourse, by giving written notice to the contractor at least thirty (30) calendar days prior to the effective date of such termination. The contractor shall be entitled to receive just and equitable compensation for services and/or supplies delivered to and accepted by the State of Missouri pursuant to the contract prior to the effective date of termination.

3. TECHNICAL SPECIFICATIONS**3.1 The contractor must provide an instrument for measuring concentrations of formaldehyde (HCHO) in ambient air. The instrument will be used in the state agency's ambient air monitoring network, and it must meet or exceed (when applicable) the following mandatory specifications:**

- 3.1.1 The instrument must be a self-contained analytical instrument capable of measuring absolute concentrations of formaldehyde in the air on a real time basis.
- 3.1.2 The instrument must have fully automatic operation during the sampling mode.
- 3.1.3 The instrument must have a HCHO gas-phase detection limit of less than 75 part per trillion (ppt).
- 3.1.4 The instrument must be capable of automatic calibration using either an internal HCHO source or external HCHO standards.
- 3.1.5 The instrument must meet the following performance specifications:

Range: 0-200 ppbv
Noise: <2% at full scale
Time Constant: 300 sec (10-90%)
Power Requirements: 115-120 VAC
Analog Outputs: 0-5 volts

PARAGRAPH REVISED BY ADM. #002:

- 3.1.6 The instrument must have a RS-232 serial port interface. The state agency requires this feature in order to have the capability of remotely querying and/or downloading various information (i.e. temperature, flow rate, diagnostic information, etc.) from the instrument.
- 3.1.7 The instrument must include instrument appropriate data collection software and PC user software.
- 3.1.8 The instrument must be capable of being operated and programmed either remotely by PC software or manually by a front panel keyboard and digital display.

PARAGRAPH REVISED BY AMD. #002:

- 3.1.9 The instrument must include all support equipment, including but not limited to, items such as glassware, air pumps, connecting tubing, solution chillers, and waste collection containers, that are needed to make the HCHO monitor operate in a normal manner. These items must be included when the instrument is shipped to the state agency. The contractor is not required to supply consumables with the instrument (i.e. chemicals, reagents, etc.).
- 3.1.10 The instrument must include detailed instructions on the preparation, storage, use, and disposal of any necessary support solutions or chemicals.

PARAGRAPH REVISED BY AMD. #002:

- 3.1.11 The instrument and support equipment must include the standard manufacturer's warranty and have at least a one-year warranty on parts and labor.

4. PERFORMANCE REQUIREMENTS**4.1 The contractor must provide the following contractual performance requirements:**

- 4.1.1 The contractor must be able to provide replacement parts, or allow an outside vendor to provide replacement parts, for the HCHO monitor over the life of the instrument.
- 4.1.2 The contractor must continue to provide technical support and updates as they are available to the state agency through the life of the contract at no additional cost to the State of Missouri.

5. BIDDERS' INSTRUCTIONS**5.1 Compliance with Terms and Conditions:**

- 5.1.1 The bidder is cautioned when submitting pre-printed terms and conditions or other type material to make sure such documents do not contain other terms and conditions which conflict with those of the IFB and its contractual requirements. The bidder agrees that in the event of conflict between any of the bidder's terms and conditions and those contained in the IFB, that the IFB shall govern. Taking exception to the State's terms and conditions may render a bidder's bid non-responsive and remove it from consideration for award.

5.2 Bidder's References:

- 5.2.1 On Exhibit A the bidder should provide a list of at least three (3) current customers who have acquired and installed the proposed item/service from the bidder. The list should include the following:

Company name
Contact name
Contact's title
City and state
Telephone number and area code
Description of items/services
Availability status if contact is requested by the evaluation team.

5.3 Business Compliance:

- 5.3.1 The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that he/she and any proposed subcontractors are presently in compliance with such laws. The bidder shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:

- Registration of business name (if applicable)
- Certificate of authority to transact business/certificate of good standing (if applicable)
- Taxes (e.g., city/county/state/federal)
- State and local certifications (e.g., professions/occupations/activities)
- Licenses and permits (e.g., city/county license, sales permits)
- Insurance (e.g., worker's compensation/unemployment compensation)

5.4 American Made:

- 5.4.1 In accordance with the Domestic Product Procurement Act (hereinafter referred to as the Buy American Act) RSMo 34.350-34.359, the bidder is advised that any goods purchased or leased by any public agency shall be manufactured or produced in the United States.
- a. The requirements of the Buy American Act shall not apply if other exceptions to the Buy American mandate in RSMo 34.353 are met.
 - b. If the bidder claims there is only one line of the good manufactured or produced in the United States, RSMo 34.353 (2), or that one of the exceptions of RSMo 34.353 (3) applies, the Executive Head of the Agency bears the burden of certification as required prior to the award of a contract.
 - c. In accordance with the Buy American Act, the bidder must provide proof of compliance with RSMo 34.353. Therefore the bidder should complete and return Exhibit B, certification regarding proof of compliance, with the bid. This document must be satisfactorily completed prior to an award of a contract.
 - d. If any products and/or services offered under this IFB are being manufactured or performed at sites outside the continental United States, the bidder MUST disclose such fact and provide details with the bid.

5.5 Description of Product:

- 5.5.1 The bidder should present a detailed description of all products and services proposed in the response to this Invitation for Bid. It is the bidder's responsibility to make sure all products proposed are adequately described. It should not be assumed that the evaluator has specific knowledge of the products proposed; however, the evaluator does have sufficient technical background to conduct an evaluation when presented complete information.

5.6 Preprinted Marketing Materials:

- 5.6.1 The bidder may submit preprinted marketing materials with the bid. However, the bidder is advised that such brochures normally do not address the needs of the evaluators with respect to the technical evaluation process and the specific responses which have been requested of the bidder. The bidder is strongly discouraged from relying on such materials in presenting products and services for consideration by the state.

5.7 Bid Detail Requirements and Deviations:

- 5.7.1 It is the bidder's responsibility to submit a bid that meets all mandatory specifications stated herein. The bidder should clearly identify any and all deviations from both the mandatory and desirable specifications stated in the IFB. Any deviation from a mandatory requirement may render the bid non-responsive. Any deviation from a desirable specification may be reviewed by the state as to its acceptability and impact on competition.
- 5.7.2 **Bidders should note:** A descriptive brochure of the model bid may not be acceptable as clear identification of deviations from the written specification.

5.8 Unit of Measure:

- 5.8.1 If the unit of measure specified on the attached pricing pages is different than the manner in which the bidder offers that item, then the unit of measure being proposed by the bidder must be clearly identified on the pricing page.
- 5.8.2 In the cost evaluation, a unit price conversion will be done to fairly evaluate bid prices. However, for any resulting contract, the unit of measure bid will be the unit of measure awarded. Bidders are encouraged to contact the Buyer **prior to** submission of their bid to discuss anticipated unit modifications. The bidder is cautioned that the State of Missouri reserves the right to clarify the unit of measure modification or to disqualify the bid for that line item if the unit of measure modification is not deemed appropriate or in the best interests of the State of Missouri.

5.9 Electronic Bids:

- 5.9.1 If the bidder is responding electronically through the Online Bidding website, the bidder should submit completed exhibits, forms, and other information concerning the bid as an attachment to the electronic bid. Specific instructions for submitting electronic attachments are included in the Online Bidding website. Be sure to include the bid number, company name, and a contact name on any attachments submitted with the electronic bid. Bidders submitting electronic and hard copy bid responses which are not identical should explain which response(s) is(are) valid for the state's consideration. In the absence of such explanation, the state reserves the right to evaluate the response which serves its best interest.
- a. The exhibits and forms provided herein can be saved into a word processing document of the bidder's own creation, completed by the bidder, and then attached to the electronic submission. Other requested or required information should be attached to the electronic bid in whatever format the bidder desires.
 - b. Specifically the bidder should submit the following with the electronic bid as an attachment: brand, model, warranty period, domestic products status, and product information.
 - c. Exhibits, forms and other information may also be submitted through mail or courier service. However, any such submission should be received prior to the specified closing date and time.

5.10 Cost Evaluation:

- 5.10.1 The evaluation shall cover the original contract period. The cost evaluation shall include all mandatory requirements. However, the State of Missouri reserves the right to evaluate optional items, if deemed necessary.

5.11 Determination for Award:

- 5.11.1 The award of the contract shall be made to the lowest priced responsive bidder. The State of Missouri reserves the right to reject any bid which is determined unacceptable for reasons which may include but are not necessarily limited to: 1) failure of the bidder to meet mandatory general performance specifications; and/or 2) failure of the bidder to meet mandatory technical specifications; and/or, 3) receipt of any information, from any source, regarding delivery of unsatisfactory product or service by the bidder within the past three years. As deemed in its best interests, the State of Missouri reserves the right to clarify any and all portions of any bidder's offer.

5.12 Open Competition:

- 5.12.1 Any manufacturer's name, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition.
- 3.11.2 The bidder may offer any brand of product that meets or exceeds the specifications. In addition to identifying the manufacturer's name and model number, the bidder must explain in detail how their product meets or exceed the specifications. Bids, which do not comply with the requirement and the specifications, are subject to rejection without clarification.

PRICING PAGES

LINE ITEM	MANDATORY SPECIFICATIONS	ESTIMATED QUANTITY	UNIT	UNIT PRICE
	The contractor shall provide supplies which conform to the specifications herein:			
001	C/S Code: 49304 <i>Formaldehyde Analyzer</i> Per mandatory specifications herein. Bidder to state the following: Brand: _____ Model number: _____	1	EA	\$ _____

WARRANTY REVISED BY AMD. #002:**Warranty:**

The instrument and support equipment must include the standard manufacturer's warranty and have at least a one-year warranty on parts and labor. Bidder should state warranty to cover workmanship and materials. The warranty shall commence upon delivery and acceptance by the State of Missouri.

DELIVERY REVISED BY AMD. #002:**Delivery:**

The desired delivery is sixty (60) days after receipt of order. Bidder should state delivery in days after receipt of order: _____ calendar days ARO.

MBE/WBE Certification:

Executive Order 98-21 directs state agencies to increase the participation of certified minority business enterprises (MBE) and women business enterprises (WBE) in state procurements. MBE/WBE certification by the State of Missouri, Office of Administration, Office of Equal Opportunity is required to be considered an eligible MBE/WBE in meeting participation goals. If you qualify as a MBE or a WBE as defined in 37.020 RSMo, please mark the appropriate blank below. To obtain an application for certification, go to the OEO Internet website and download an application at <http://www.oa.state.mo.us/oao/Application-profit.pdf> or contact the MBE/WBE Certification Program at 877-259-2963 or email heyern@mail.oa.state.mo.us.

_____ MBE _____ WBE _____ Both

Employee Bidding/Conflict of Interest:

Bidders who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder or any owner of the bidder's organization is currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name and title of state employee, General

Assembly member or statewide elected official: _____

Name of state agency where employed: _____

Percentage of ownership interest in bidder's
organization held by state employee, General
Assembly member or statewide elected official: _____ %

EXHIBIT A
BIDDER'S REFERNCES

Company Name: _____
Contact Name: _____
Contact's Title: _____
City: _____ State: _____
Telephone Number and Area Code: _____
Description of Equipment/Services Furnished: _____
Availability status of Reference: _____

=====

Company Name: _____
Contact Name: _____
Contact's Title: _____
City: _____ State: _____
Telephone Number and Area Code: _____
Description of Equipment/Services Furnished: _____
Availability of Reference: _____

=====

Company Name: _____
Contact Name: _____
Contact's Title: _____
City: _____ State: _____
Telephone Number and Area Code: _____
Description of Equipment Furnished: _____
Availability of Reference: _____

EXHIBIT B**STATE OF MISSOURI -- OFFICE OF ADMINISTRATION
DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN)**

The Missouri Domestic Products Procurement Act (34.350-34.359 RSMo) requires that for all bids with a value of \$25,000 or more, the goods or commodities purchased by any public agency or used or supplied in the construction, alteration, repair, or maintenance of any public works must be **manufactured or produced** in the United States. As defined in 34.350 RSMo, United States means the United States of America, the District of Columbia, and all territories and possessions subject to the jurisdiction of the United States. The law also requires that the bidder must provide proof of compliance. **Note: In general, if an import tariff is applied to an item, it does not qualify for the Buy American preference. In addition, Most Favored Nation status does not allow application of the preference.**

Section A – All Products Are Manufactured or Produced In U.S.

If all products bid qualify as domestic products under Missouri law, complete only Section A.

I hereby certify that all products qualify as domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.
SIGNATURE (If submitting bid electronically, typed signature required).
COMPANY NAME

If Section A is completed, do not complete Section B.

Section B – Only One Product Line or No Products Are Manufactured or Produced In U.S.

If only one product line or no products are manufactured or produced in the U.S. complete only section B.

I hereby certify that there is only one product line or no product manufactured or produced in the U.S., that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.
SIGNATURE (If submitting bid electronically, typed signature required).
COMPANY NAME

Section C – Products May Qualify Because of Qualifying Treaty

If some or all products bid qualify for domestic status because of a trade treaty, etc., then the bidder must identify each product, country and qualifying treaty, etc. below. The bidder must list ALL products which are or may qualify as domestic below. If more space is needed, please copy this form and submit as an attachment.

BID ITEM NUMBER(S)	COUNTRY WHERE MANUFACTURED OR PRODUCED	QUALIFYING TREATY, LAW, AGREEMENT, OR REGULATION
SECTION C		
I hereby certify that the specific items listed above are domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.		
SIGNATURE (If submitting bid electronically, typed signature required)		
COMPANY NAME		

NOTE: Any product not listed above in Section C will be considered non-domestic if Section A is not signed. If this form is not completed, signed, and returned, items bid may not receive the domestic preference.

TERMS AND CONDITIONS REVISED BY AMENDMENT #001:
STATE OF MISSOURI
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT
TERMS AND CONDITIONS -- INVITATION FOR BID

1. TERMINOLOGY/DEFINITIONS

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

2. APPLICABLE LAWS AND REGULATIONS

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the IFB based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the bidder must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance.

4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why

the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.

- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

5. SUBMISSION OF BIDS

- a. Bids may be submitted electronically as permitted by the IFB through the State of Missouri's On-Line Bidding website or hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically may be modified on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid submitted electronically may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Prices shall be posted on the state's On-Line Bidding website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Executive Orders 03-27 and 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DPMM to the successful bidder. The DPMM reserves the right to make awards by item, group of items, or an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.

- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding website for a reasonable period after bid award and maintains images of all bid file material for review. Bidders who include an email address with their bid will be notified of the award results via email.
- l. The DPMM reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

9. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.
- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

13. WARRANTY

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

14. CONFLICT OF INTEREST

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

15. REMEDIES AND RIGHTS

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.

- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

16. CANCELLATION OF CONTRACT

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

17. COMMUNICATIONS AND NOTICES

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

18. BANKRUPTCY OR INSOLVENCY

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

19. INVENTIONS, PATENTS AND COPYRIGHTS

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;
- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

21. AMERICANS WITH DISABILITIES ACT

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

22. FILING AND PAYMENT OF TAXES

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

23. TITLES

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.